

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Keith Fisher,

Civ. No. 07-4556 (PAM/AJB)

Petitioner,

v.

ORDER

M. Cruz, Warden,

Respondent.

This matter is before the Court on Petitioner's objections to United States Magistrate Judge Arthur J. Boylan's Report and Recommendation ("R&R") dated November 20, 2007. For the reasons that follow, the Court adopts the R&R and summarily dismisses the Petition.

This is Petitioner's second 28 U.S.C. § 2241 Petition. As noted in the R&R, the claims he raises in this Petition are substantially similar to the claims he raised in his first Petition. However, as explained in both the previous R&R and in this Court's Order, the claims Petitioner is attempting to raise here are not cognizable in this Court, but rather must be brought in the sentencing court.

Petitioner makes two arguments in support of his Objections. He contends that because he has withdrawn his appeal of the Order in the previous case, this Petition is his only avenue for relief. However, as this Court ordered in the previous case, that matter has been transferred to the Eastern District of Pennsylvania, and Petitioner can litigate his claims in that court. Petitioner also asserts that his claims relate to inaccuracies in the Pre-Sentence

Investigation Report (“PSR”) and thus are challenges to the BOP’s computation of his sentence. However, because the sentencing court presumably adopted the calculations in the PSR, claims of actual innocence as to the conduct included in the PSR should be made before that court. Because Petitioner’s first Petition has been transferred to the sentencing court, Petitioner can continue to pursue his challenges there.

The R&R correctly determined that this Petition constitutes abuse of the writ. As such, it must be dismissed.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The R&R (Docket No. 3) is **ADOPTED**; and
2. Petitioner’s Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (Docket No. 1) is **DISMISSED**.

Dated: December 12, 2007

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge